

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**D.C., INC., d/b/a DIRT CHEAP
CIGARETTES AND BEER,**

Plaintiff,

vs.

**SUJVL, INC., a Missouri Corporation,
SAI VIDEO, INC., a Missouri Corporation,
JAYANT PATEL, an Individual,
MINAKSHI K. SHAH, an Individual, and
JIGAR PATEL, an Individual,**

Defendants.

Case No.:

JURY TRIAL DEMANDED

MOTION FOR PRELIMINARY INJUNCTION

Comes now Plaintiff D.C., Inc. d/b/a Dirt Cheap Cigarettes and Beer (“Dirt Cheap” or “Plaintiff”) pursuant to Rule 65(a) of the Federal Rules of Civil Procedure and Section 34 of the Lanham Act, 15 USC § 116, and for its Motion for Preliminary Injunction to stop Defendants SUJVL, Inc., SAI Video, Inc., Jayant Patel, Minakshi K. Shah, and Jigar Patel (collectively “Defendants”) from continuing to improperly infringe upon and dilute Plaintiff’s properly registered and well-developed trademarks and from continuing to unfairly compete with Plaintiff, states as follows:

1. Plaintiff Dirt Cheap, which operates 12 discount tobacco and liquor retail establishments throughout the St. Louis metropolitan area, has established, used and registered trademarks including, “Dirt Cheap” in its distinctive crooked letter font and red color scheme for its company name, and “Cheap Cheap Fun Fun”, “Fun Fun Cheap Cheap”, “It’s always a lot of fun at Dirt Cheap”, “We are the last refuge for the persecuted smoker”, and others (the “IRT

CHEAP Trademarks”). Through December 31, 2009, Dirt Cheap spent in excess of \$9.0 Million for advertising to strengthen its brand. To further protect its brand and advertising phrases, Dirt Cheap obtained valid trademarks with U.S. Trademark Registrations.

2. Defendants are marketing and selling competing discount liquor, beer and cigarettes under the banner of “Cheap Cheap” in stores that not only bear trademarks confusingly similar to Plaintiff’s DIRT CHEAP Trademarks—but also improperly used slogans that are deceptively similar to Dirt Cheap’s properly trademarked slogans all for the purpose of infringing upon and diluting Dirt Cheap’s trademarks and unfairly competing with Dirt Cheap’s business.

3. Plaintiff has filed its six count Complaint against Defendants for trademark infringement, trademark dilution and unfair competition.

4. Plaintiff has suffered and continues to suffer irreparable harm due to Defendants’ conduct for which there is no adequate legal remedy.

5. The amount of harm that Plaintiff is suffering and will continue to suffer is great and the injury, if any, that granting the injunction will inflict on Defendants is minimal.

6. Public interest favors issuance of a preliminary and permanent injunction against Defendants.

7. Based on the facts and the law, it is likely that Plaintiff will succeed on the merits of its claims as stated in the Complaint.

8. Plaintiff contemporaneously files herewith and incorporates herein by reference its Memorandum in Support of Plaintiff’s Motion for Preliminary Injunction.

Wherefore, Plaintiff D.C., Inc. d/b/a Dirt Cheap Cigarettes and Beer prays this Court for its Preliminary Injunction enjoining Defendants, their officers, agents, servants, employees, attorneys and all persons acting in concert with them:

1. From using in any manner the DIRT CHEAP Trademarks, or any other designation that is confusingly similar to Dirt Cheap's marks, including, but not limited to the Infringing Trademarks, as to be likely to cause confusion, deception or mistake on or in connection with the operation of retail liquor and tobacco establishments not Plaintiff's, or not authorized by Plaintiff, or is likely to dilute Dirt Cheap's Trademarks;
2. From committing any acts calculated to cause purchasers to believe that the Defendants' retail establishments and products sold therein are those sold under the control and supervision of Plaintiff, or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Plaintiff;
3. From further diluting and infringing the DIRT CHEAP Trademarks, and damaging Plaintiff's goodwill;
4. From otherwise competing unfairly with Plaintiff in any manner; and
5. From conspiring with, aiding, assisting or abetting any other person or business entity in engaging in or performing any of the activities referred to above.

Respectfully Submitted

/s/ Timm W. Schowalter

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